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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/816,216	04/01/2004	Andrew Peter Phelan	ISA-008.01	7299

25181 7590 03/07/2006

FOLEY HOAG, LLP  
PATENT GROUP, WORLD TRADE CENTER WEST  
155 SEAPORT BLVD  
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EXAMINER
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
GEISEL, KARA E

ART UNIT	PAPER NUMBER
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2877

DATE MAILED: 03/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/816,216	PHELAN, ANDREW PETER	
	Examiner	Art Unit	
	Kara E. Geisel	2877	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 21 December 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-7, 9-18 and 21-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1, 14, 16, 17, 21 and 23-33 is/are allowed.
- 6) ☒ Claim(s) 3, 6, 7, 9-13 and 15 is/are rejected.
- 7) ☒ Claim(s) 2, 4, 5, 18 and 22 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>1205</u> | 6) <input type="checkbox"/> Other: _____  |

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## **DETAILED ACTION**

### ***Priority***

Acknowledgment is made of applicant's claim for foreign priority under 35 U.S.C. 119(a)-(d).

The certified copy has been filed in this application on December 21<sup>st</sup>, 2005.

### ***Information Disclosure Statement***

The information disclosure statement filed on December 21<sup>st</sup>, 2005 has been considered by the examiner.

### ***Inventorship***

In view of the papers filed December 21<sup>st</sup>, 2005, it has been found that this nonprovisional application, as filed, through error and without deceptive intent, improperly set forth the inventorship, and accordingly, this application has been corrected in compliance with 37 CFR 1.48(a). The inventorship of this application has been changed by adding the new inventor, Stephen P. Sharrock.

The application will be forwarded to the Office of Initial Patent Examination (OIPE) for issuance of a corrected filing receipt, and correction of Office records to reflect the inventorship as corrected.

### ***Claim Objections***

Claims 2, 4, and 5 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim (in this case, the newly amended claim one, which includes all the features of 2, 4, and 5). Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form.

Claim 18 is objected to because of the following informalities: minor typographical error.

In regards to claim 18, line 1, "party" should be changed to --partly-- in order to correct an obvious typographical error.

Appropriate correction is required.

Claim 22, is objected to as being a duplicate of claim 21.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 3, 6-7, 9-13, and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regards to claim 3, it is not clear which zone (first, second, or third) applicant is referring to.

In regards to claims 6, 9, 11-13, and 15 it is not clear which photodetector (first or second) applicant is referring to.

In regards to claim 7, it is not clear which photodetector or zone applicant is referring to.

Claims, which are dependent from claims 3, 6-7, 9, 11-13, and 15 inherit the problems of these claims, and are therefore also rejected under 35 U.S.C. 112, second paragraph.

***Allowable Subject Matter***

Claims 1, 14, 16-17 are allowed over the prior art of record for the reasons set forth in the previous Office Action (paper number 061405) and for the reasons set forth in the amendment, filed December 21<sup>st</sup>, 2005, page 11.

Claims 3, 6-7, 9-13, and 15 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action as they depend on an allowed claim.

Claim 18 would be allowable if rewritten or amended to overcome the objections, set forth in this Office action as it depends on an allowed claim.

Claims 21, and 23-33 are allowed over the prior art of record.

The following is a statement of reasons for the indication of allowable subject matter:

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As to claim 21, the prior art of record, taken alone or in combination, fails to disclose or render obvious an assay result reading device for reading the result of an assay performed using a test strip comprising a photodetector which detects light emanating from each of two zones, and a computation circuit responsive to signals generated by the photodetector representing the presence or absence of a fluid sample in at least one of the zones to calculate a flow rate for a fluid along the test strip, and reject the assay result if the flow rate is outside upper or lower limits, in combination with the rest of the limitations of claim 21.

As to claim 23, the prior art of record, taken alone or in combination, fails to disclose or render obvious a device comprising a second light detector configured to (a) detect light from the third zone of a test strip retained in the test position when the light source illuminates the third zone, and (b) detect light from the second zone of a test strip retained in the test position when the light source illuminates the second zone, in combination with the rest of the limitations of claim 23.

As to claim 31, the prior art of record, taken alone or in combination, fails to disclose or render obvious a method comprising detecting light from an illuminated first zone using a first light detector, detecting light from an illuminated second zone using a first light detector, detecting light from an illuminated second zone using a second light detector, detecting light from an illuminated third zone using a second light detector, and determining a rate at which the liquid advances along the test strip based on received signals, in combination with the rest of the limitations of claim 31.

#### *Response to Arguments*

The objection to the priority has been overcome; therefore, this objection has been withdrawn.

The rejections by 35 U.S.C. 102(g) and possibly (f) have been overcome by the request to correct inventorship, and therefore, these rejections have been withdrawn.

The amendment to the claims has overcome the double patenting rejection, therefore, this rejection has been withdrawn.

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However, the amendment raises new issues, as discussed above.

*Conclusion*

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kara E Geisel whose telephone number is **571 272 2416**. The examiner can normally be reached on Monday through Friday, 8am to 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory J. Toatley, Jr. can be reached on **571 272 2800 ext. 77**. The fax phone number for the organization where this application or proceeding is assigned is **571 273 8300**.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**HWA (ANDREW) LEE**  
**PRIMARY EXAMINER**

for

Gregory J. Toatley, Jr.  
SPE  
Art Unit 2877

K.G.

KEG

March 3, 2006